

Michael C. Creamer (ISB No. 4030)
Preston N. Carter (ISB No. 8462)
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
mcc@givenspursley.com
prestoncarter@givenspursley.com
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Attorneys for SUEZ Water Idaho Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT
APPLICATION OF SUEZ WATER IDAHO
AND EAGLE WATER COMPANY FOR
THE ACQUISITION OF EAGLE WATER
COMPANY

**Case No. SUZ-W-18-02
EAG-W-18-01**

**SUPPLEMENTAL DIRECT TESTIMONY OF MARSHALL THOMPSON
ON BEHALF OF SUEZ WATER IDAHO INC.**

June 8, 2021

1 **BACKGROUND**

2 **Q. Please state your name and title.**

3 A. Marshall Thompson, Vice President and General Manager of SUEZ in Idaho
4 (“SUEZ” or “Company”)

5 **Q. Are you the same Marshall Thompson who filed direct testimony consisting of**
6 **thirteen pages in this proceeding on November 15, 2018?**

7 A. Yes, I am.

8 **Q. What is the purpose of your supplemental testimony?**

9 A. To provide the Commission with facts that have developed since this case was
10 initiated and then stayed in early 2019, including facts regarding litigation in the
11 Idaho District Court concerning the City of Eagle’s (“City”) asserted contractual
12 right to purchase Eagle Water Company’s (“Eagle Water”) water system. I also
13 will describe the settlement of that litigation, and resulting amendments to the
14 Eagle Water-H2O Eagle Acquisitions, LLC Asset Purchase Agreement (“Eagle
15 Water – H2O Eagle APA”) and the H2O Eagle Acquisitions, LLC – SUEZ Asset
16 Purchase Agreement (“H2O Eagle - SUEZ APA”) as they bear on this case.

17 As part of the settlement, SUEZ and the City have entered into a Water
18 Management Agreement (“WMA”). My testimony discusses the various terms of
19 the WMA and the benefits the WMA will provide to SUEZ and Eagle Water
20 customers. Also as part of the Settlement, SUEZ agreed to an increased purchase
21 price for the Eagle Water assets. Its September 2018 APA with H2O Eagle has
22 been amended to reflect a revised purchase price of \$10,500,000. My testimony
23 will provide the rationale for this increase and for SUEZ’ request that the entire

1 purchase price be treated as an acquisition adjustment to be included in rate base
2 in SUEZ' next general rate case and amortized over forty years.

3 **Q. What was the reason for this proceeding being stayed?**

4 A. The Commission stayed this case on SUEZ' motion because of pending litigation
5 in the District Court, Fourth Judicial District. In that suit, the City alleged that it
6 had a contractual right-of-first-refusal to purchase Eagle Water's water system.
7 The City also asserted a claim for damages of approximately \$1.39M allegedly
8 owed to the City under its 2008 Intertie Agreement with Eagle Water. Because
9 that litigation could affect SUEZ' ability to acquire the Eagle Water assets, this
10 case was stayed pending the outcome.

11 **Q. Were you involved in the settlement negotiations among the parties to the
12 District Court case?**

13 A. Yes. Working with SUEZ' legal counsel, I was directly involved in all aspects of
14 the mediation process that led up to the settlement.

15 **Q. Would you please describe how the settlement came about?**

16 A. Soon after the lawsuit was initiated in early 2019, the Court granted SUEZ'
17 petition to intervene. Following the Court's rulings on several dispositive
18 motions, it appeared to be in the parties' interests to try to mediate a satisfactory
19 result. It was implicit in the decision to mediate that there could be some
20 scenario under which the City would not object to the SUEZ-Eagle Water
21 transaction but still would reach an agreement that meets the City's long-term
22 municipal water service objectives. The mediation began in February 2020 and
23 continued in earnest over twelve months, though it was hampered by the Covid-

1 19 pandemic. An agreement on the general outline and terms of a settlement was
2 reached in mid-January 2021. Final documents were executed on February 9,
3 2021.

4 **Q. Please describe the essential components of the settlement as they relate to this**
5 **case.**

6 A. The City agreed to dismiss its lawsuit and not oppose SUEZ and Eagle Water’s
7 application in this proceeding with the following additional terms:

8 1. Execution of a SUEZ-Eagle Water Management Agreement
9 (“WMA”), a copy of which is attached as Supplemental Attachment 5 to the
10 Amended Joint Application;

11 2. SUEZ’ non-objection to an increase in its proposed rate phase-in for
12 acquired Eagle Water customers from three years to five years;

13 3. SUEZ’ agreement to use its best efforts to make improvements to
14 the acquired Eagle Water assets (defined in the Settlement Agreement as “System”)
15 “in accordance with the schedule of improvements as [may be] approved by the
16 Commission;” and

17 4. Payment of \$1.75M to the City in the event the Commission
18 approves the Eagle Water asset sale to SUEZ and the transaction closes.

19 **Q. Please describe the substantive terms of the Water Management Agreement.**

20 A. The WMA is modeled in part on a 2007 Mutual Cooperation Agreement between
21 SUEZ and the City of Meridian (the “SUEZ-Meridian Agreement”). That
22 agreement and the WMA provide the parties with a basis for improved
23 communications and cooperation as it relates to their respective water systems and

1 extension of service to new development within their service areas and areas of
2 interest. SUEZ and Meridian have had a productive relationship operating under
3 their agreement.

4 **Q. In what ways is the WMA similar to the SUEZ-Meridian Agreement?**

5 A. The most important similarity is the concept of “Gray Areas.” This concept was
6 developed originally in the SUEZ-Meridian Agreement because SUEZ’ certificated
7 service area overlapped with Meridian’s expanding city limits and its area of
8 impact. This situation created uncertainty for developers, Meridian and SUEZ
9 regarding who would be providing water service to new development. In some
10 cases, Meridian had sufficient facilities nearby to be able to extend service most
11 efficiently; in other cases, SUEZ did. To minimize uncertainty and potential delays
12 in service extensions, the Gray Area concept was adopted. In the SUEZ-Meridian
13 Agreement, decisions about who will serve a particular Gray Area are based, in
14 part, on whether it will be annexed into the City of Meridian (or the City of Boise),
15 or if the area is not annexed into either City, then the decision is based on what
16 entity (Meridian, Boise or a third party) will be providing sewer service to the
17 development.

18 In the WMA, on a request-by-request basis, the party that has facilities available in
19 the vicinity or that is otherwise most easily, efficiently and reliably able to serve a
20 new customer request will provide the water service to the area included in the new
21 customer request. The Gray Area concept is a mechanism to avoid the past
22 uncertainties, delays and legal costs incurred by SUEZ and the City related to
23 extensions of water service. In my experience, this concept has worked very well

1 for SUEZ and Meridian. I fully expect it to have the same benefits for SUEZ and
2 the City of Eagle.

3 **Q. What areas are treated as Gray Areas under the WMA?**

4 A. The WMA identifies three areas to be Gray Areas (designated as Areas 1, 3 and 6
5 and depicted on the WMA exhibit) immediately upon execution of the WMA.
6 These include areas that are within SUEZ' current certificated service area and
7 some that are not.

8 In the WMA, the SUEZ and the City agree that Commission approval will be sought
9 to remove the following areas from SUEZ' certificated service area.

10 **Area 4:** Area 4 depicted in the WMA is a small area within Eagle Water's current
11 certificated service area but not contiguous to its primary water system. Area 4 has
12 28 existing Eagle Water customers. Assuming that SUEZ purchases the Eagle
13 Water assets and the Eagle Water certificated area is subsumed into SUEZ' CPCN,
14 the WMA provides the City eighteen months in which to petition the Commission
15 for removal of Area 4 from SUEZ' certificated service area. While the City has the
16 responsibility to pursue this application, SUEZ has agreed to cooperate with the
17 City in this process.

18 **Area 5:** Area 5 is an approximately 3,640-acre area west of State Highway 55 that
19 was added to SUEZ' certificated service area in Case No. UWI-W-07-01 (Order
20 30345). This area was contemplated to be a follow-on development to Avimor's
21 existing Ada County project, but is currently undeveloped and unserved. Avimor
22 and the City have had discussions concerning whether the City might annex this
23 area and provide water service. In the WMA the parties agree that unless SUEZ is

1 serving or has committed to serve a development in Area 5, then at such time, if
2 any, that the City annexes any of Area 5, SUEZ will seek Commission approval to
3 remove that area from its certificated service area. If the Commission does not
4 approve the request, then under the WMA, Area 5 becomes a Gray Area.

5 **Area 3:** Area 3 is a non-contiguous portion of SUEZ’ certificated service area
6 situated northeast of the intersection of Homer Road and North Eagle Road. This
7 area was added to SUEZ’ CPCN in Case No: UWI-W-2006-04 (Amended Order
8 No. 30367). This was to be the site for Kastera Development’s planned 700-home
9 Trailhead Community subdivision. However, the entire area remains undeveloped
10 and unserved. Under the WMA, SUEZ agreed to apply to the Commission to have
11 this area removed from its certificated service area. If SUEZ’ application is not
12 approved, then Area 3 will become a Gray Area under the WMA. SUEZ filed this
13 application on April 2, 2021 (Case No. SUZ-W-21-02).

14 **Q. What other significant terms are in the WMA?**

15 A. The WMA clarifies those areas where the parties have the exclusive right to provide
16 water service.

17 The WMA also includes agreements to maintain and provide on request records of
18 monthly ground water withdrawals and semi-annual water levels from SUEZ’ and
19 the City’s wells. They agree to give each other advance notice of any water right
20 application filings with the Idaho Department of Water Resources (“IDWR”)
21 concerning any ground water right with a point of diversion within 1/3 mile of the
22 other party’s then existing service area or city limits. They also agree to notify each
23 other of any work being performed on wells within the same 1/3 mile limit. SUEZ

1 and the City will meet at least once a year to review their operations and discuss
2 items of joint interest, and they have agreed on a process for entering into future
3 intertie agreements.

4 **Q. How does the WMA benefit SUEZ and Eagle Water customers?**

5 A. I believe that the WMA will provide more certainty and less delay and expense for
6 SUEZ in planning for and serving new development. This translates into lower
7 rates for its customers.

8 **Q. Please explain.**

9 A. There has been a fairly long history of disagreement and lack of coordination
10 between the City of Eagle and SUEZ. Since at least 2002, when the City took back
11 operation of its municipal water system, both the City and SUEZ have contended
12 with swings in economic conditions that drove remarkable growth spurts coupled
13 with increased demand for water service as well as development lulls and even
14 pullbacks. Much of this occurred in areas at the margins of the City's and SUEZ'
15 service areas, and in some instances prompted significant capital investments by
16 both parties. It also created situations where the City and SUEZ were at odds over
17 who would serve the new demand, the potential impacts of new ground water wells
18 on the local water source and potential well interference issues. These
19 disagreements tended to play out in extended and expensive contested cases and
20 hearings before IDWR and the Commission that left the parties in no better position
21 to cooperatively resolve their next potential disagreement.

22 An example is Case No. UWI-W-06-04, discussed above. There, SUEZ received a
23 request to serve the Trailhead Community to be developed in unincorporated Ada

1 County lying west of SUEZ' certificated service area and north of the City's city
2 limits and area of impact. At issue before the Commission was whether SUEZ
3 would be authorized to expand its service area. If not, then the City intended to
4 extend service to the area. After concluding that SUEZ' service area would be
5 extended to include the Trailhead Community, the Commission observed:

6 What the record in this case reveals is that both the City's Mayor
7 and the Company's general manager agree that it is in the public
8 interest for area water providers to cooperate in water planning and
9 area of service decisions. Yet it appears from the testimony of
10 those with responsibility for planning for each water provider that
11 such cooperation does not take place, not even discussions. Is the
12 public interest being equally well served by not engaging in
13 planning discussions? We suspect not.
14

15 Amended Order No. 30367 at 3.

16 The SUEZ-City WMA addresses the Commission's observation directly and will
17 drive better communications, cooperation and planning. This will benefit the City's
18 and SUEZ' current and future water customers, including the current Eagle Water
19 customers assuming the asset purchase and sale is approved. I expect that
20 implementing this agreement will minimize situations where the City and SUEZ
21 may find that litigation is the only avenue to determine their respective rights.

22 **Q. What is the rationale for increasing the rate phase-in for acquired Eagle Water**
23 **customers from three years to five years?**

24 A. The City requested that SUEZ agree to this on the ground that it will further ease
25 the transition for Eagle Water customers from their current rates to SUEZ' rates.
26 SUEZ recognizes the tension between bringing all of its customers to parity
27 expeditiously and attempting to correlate necessary investments with their timely

1 recovery through rates. However, as new SUEZ customers, Eagle Water customers
2 necessarily will experience a substantial increase in their water rates. That is why
3 SUEZ originally proposed a three-year rate phase-in. A five-year phase-in of rates
4 is not inconsistent with treatment of this issue in other cases I am aware of, and
5 SUEZ believes this is a reasonable concession, particularly if SUEZ' schedule of
6 investment in Eagle Water system upgrades can be better matched with the rate
7 phase-in as discussed below.

8 **Q. Can you please explain the City's and SUEZ' agreement that SUEZ use its**
9 **best efforts to make improvements to the acquired Eagle Water assets in**
10 **accordance with the schedule of improvements approved by the Commission?**

11 A. In the Joint Application, SUEZ included a proposed schedule describing planned
12 investments in the Eagle Water system over a three-year period. The priority items
13 proposed in that schedule would bring the Eagle Water system into compliance with
14 IDEQ requirements for peak hour and fire flow, provide improved command-
15 control-monitoring of system operations, and implement industry standard
16 chlorination of source wells. Other upgrades such as meter and service
17 replacements, safety and security improvements and pipeline replacements and a
18 two-million-gallon tank were scheduled over the proposed three-year period. All
19 of the above improvements are summarized in a table on page 11 of the Direct
20 Testimony of Cathy Cooper filed in support of the Joint Application.

21 In the settlement discussions, the City expressed a desire that SUEZ commit to
22 making these improvements on the timeframe indicated in Ms. Cooper's Direct
23 Testimony. It was agreed that because of potential unforeseen events, including

1 the as yet unknown outcome in this proceeding that could prevent SUEZ from
2 meeting that commitment, SUEZ would use its best efforts to implement the
3 proposed system upgrades on a time frame approved by the Commission.

4 **Q. Does SUEZ still believe that a three-year implementation period is**
5 **appropriate?**

6 A. In part, yes.

7 **Q. Please explain.**

8 A. The schedule of planned improvements originally contained in Ms. Cooper's Direct
9 Testimony was developed around an approximate match of immediate and longer-
10 term system improvement needs and the three-year rate phase-in. As discussed in
11 Ms. Cooper's Supplemental Testimony, with an extended rate phase-in, SUEZ now
12 proposes a revised schedule aimed at accomplishing priority system improvements
13 necessary to bring the Eagle Water system into compliance within the first three
14 years. SUEZ now proposes other improvements be spread out over a five-year
15 period. As proposed, former Eagle Water customers would, subject to unforeseen
16 contingencies, see immediate necessary upgrades and benefits in the first three
17 years and additional improvements and benefits over the balance of the five years
18 as their rates are phased in. This proposed schedule is summarized in a revised
19 table in Ms. Cooper's Supplemental Testimony.

20 **Q. Is SUEZ committed to use its best efforts to implement the improvements on**
21 **such schedule as ultimately may be approved by the Commission?**

22 A. Yes, it is.

1 **Q. You previously stated that the settlement with the City also involved an**
2 **increase in the purchase from to \$10,000,000 to \$10,500,000. Will you please**
3 **describe how this number was arrived at?**

4 A. This was a negotiated term between SUEZ, H2O Eagle and Eagle Water. It in part
5 reflects changed conditions since the time of SUEZ' original agreement with H2O
6 Eagle, the continuing value of the Eagle Water assets to SUEZ and its customers,
7 the addition of new Eagle Water customers, the avoided cost of protracted litigation
8 and the value of timely completion of the transaction.

9 **Q. You also previously stated that the settlement with the City included a**
10 **payment to it of \$1.75M in the event the Commission approves the Eagle**
11 **Water asset sale to SUEZ and the transaction closes. How is this settlement**
12 **payment to be made?**

13 A. Eagle Water and H2O Eagle are responsible for making the settlement payment to
14 the City out of their proceeds from the asset purchase. This is described in the
15 Supplemental Testimony of Mr. Robert DeShazo.

16 **Q. SUEZ' Amendment to Joint Application requests that the Commission**
17 **approve an acquisition adjustment for the amended purchase price that**
18 **includes the additional \$500,000. What is the rationale for including this**
19 **additional amount?**

20 A. As was discussed in my Direct Testimony (p. 6, 1.19 - p. 8, 1.3; p.9, 1.21- p.11, 1.6)
21 and in Cathy Cooper's Direct Testimony (p.5, 1.18 – p.9, 1.14), the negotiated
22 purchase price and an acquisition adjustment for the Eagle Water Assets are
23 supported by avoided capital investments that SUEZ would otherwise make if the

1 Eagle Water assets were not incorporated into SUEZ' system. As described in detail
2 in Ms. Cooper's Supplemental Direct Testimony, the increased purchase price still
3 is significantly less than the estimated avoided capital cost to SUEZ of \$11.2M that
4 would be incurred without acquisition of Eagle Water assets. There also has been
5 no significant change in the net book value of the Eagle Water system in the ensuing
6 two years since this case was initiated. Nevertheless, the existing facilities,
7 particularly newer facilities that represent contributions in aid of construction,
8 continue to have a fair value component. SUEZ also believes that the five percent
9 increase to the purchase price represents a reasonable and necessary cost to acquire
10 the assets free of adverse claims in a timely way. Even as increased, the purchase
11 price represents an investment of \$2,534/customer--\$154 more than under the
12 original purchase price, which compares favorably with SUEZ' current investment
13 of \$3,720/customer) as of its 2021 rate case (and a comparable \$3,278 per customer
14 at the end of 2017).

15 **Q. Is SUEZ proposing to change the period over which an acquisition adjustment**
16 **would be amortized if included in rates?**

17 A. No, it is not. SUEZ is still proposing a forty-year amortization.

18 **Q. At page 12-13 of your Direct Testimony you summarized a communications**
19 **plan related to the Eagle Water acquisition. Has SUEZ had any**
20 **communications with its customers or Eagle Water customers since this case**
21 **was stayed?**

22 A. SUEZ has not had any direct communications with its customers concerning the
23 proposed acquisition since this case was stayed. SUEZ, the City and Eagle Water

1 did issue a joint press release advising of the settlement and their intent that this
2 case would proceed.

3 SUEZ will restart customer outreach and communications when the case resumes.

4 The updated plan includes:

- 5 • Press release (at filing)
- 6 • Eagle Water Company customer notification including postcard and link to
7 online FAQ. (at filing)
- 8 • Website, including press release, FAQ, and other information to be updated as
9 needed. (pre-closing)
- 10 • Press release. (pre-closing)
- 11 • External stakeholder outreach to municipal offices and regulatory agencies.
12 (pre closing)
- 13 • Welcome packets focused on SUEZ' customer-friendly online portal which
14 includes account management, conservation tips, and tracking tools to help
15 new customers save money. (post-closing)
- 16 • Social media posts. (pre and post-closing)
- 17 • Information sessions at community functions and through webinars. (pre and
18 post-closing)

19 **Q. Do you believe the acquisition of Eagle Water by SUEZ is in the public**
20 **interest?**

21 A. Yes, for all of the reasons stated above.

22 **Q. Does this conclude your testimony?**

23 A. Yes.